*CERTIFIED TRANSLATION*

Commonwealth of Puerto Rico
IN THE CIRCUIT COURT OF APPEALS
REGIONAL CIRCUIT I – SAN JUAN
PANEL III

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| PARTIDO ACCION CIVIL<br>Plaintiff<br><br>v.<br><br>COMMONWEALTH OF PUERTO RICO; STATE ELECTIONS COMMISSION; JUAN R. MELECIO, PRESIDENT OF THE STATE ELECTIONS COMMISSION; NEW PROGRESSIVE PARTY ELECTORAL COMMISSIONER; POPULAR DEMOCRATIC PARTY ELECTORAL COMMISSIONER; AND PUERTO RICAN INDEPENDENCE PARTY ELECTORAL COMMISSIONER<br>Defendants | CIVIL NO.<br>K PE98-0866 (907)<br><br>RE:<br><br>DECLARATORY JUDGMENT AND PERMANENT INJUNCTION |

**COMPLAINT**

TO THE HONORABLE COURT:

COMES NOW the Partido Acción Civil, and very respectfully alleges and prays:

## I. INTRODUCTION

1. Plaintiff, Partido Acción Civil, is a group of citizens who aspire to register as a party by petition because they do not agree with the manner in which the current political parties are handling our country's public affairs. The Partido Acción Civil believes that with its ideas, government program and genuine efforts it can contribute to the resolution of the serious problems faced by the People of Puerto Rico.

Registering as a party by petition is of utmost importance to the Partido Acción Civil. Becoming a party by petition means having an Electoral Commissioner in the State Elections Commission who will intervene in the electoral processes, with full voting authority. It means having employees in all of the Permanent Registration Boards, having access to the Electoral Fund to develop its government program, campaigning, and having officials in all of the electoral colleges to ensure that all votes in its favor are counted.

The other parties have all of those benefits. A group of citizens without those resources is at a serious disadvantage. That is why it is so important to be a party by petition. To become a party by petition is the consecration of freedom of association, of speech and of the right to vote for citizen groups with similar political interests, so that they may face the traditional political parties on equal footing.

2. The right to vote, to speech, to association, to asking the government for reparation of grievances, and to be candidates of the Partido Acción Civil and of its constituents, is being violated on a daily basis by the two

statutory provisions challenged herein. The first of those statutory provisions is the requirement that the oaths for each petition for the registration of the Partido Acción Civil be notarized before notaries who comply with the Notarial Act currently in effect in Puerto Rico.

This Honorable Court may take judicial notice that according to the Notarial Act, only attorneys who have passed the bar and are admitted to the practice of the profession in this jurisdiction may take oaths. This means that the oaths for the petitions for registration may only be notarized by attorneys admitted to the practice of law in Puerto Rico.

This requirement is extremely onerous, unreasonable and discriminatory, it violates due process of the law, and it causes irreparable damages to the Partido Acción Civil and to its members, insofar as it is extremely difficult to recruit attorneys who will take on the task of notarizing the oaths of the petitions for registration.

3. The other requirement whose unconstitutionality is requested is the requirement that the endorsements must be filed with the Commission within just seven (7) days after being sworn. This requirement is extremely onerous and unreasonable due to the fact that it is too short a term. For each endorsement it is necessary to prepare reports, make copies, confront the endorsements with the voter lists, and take them to the Commission. This seven (7) day term is extremely short.

This requirement causes damages to the Partido Acción Civil with respect to is rights to expression, to vote, to association, to requesting from the government reparation for grievances, and to being a candidate. This

requirement is totally unreasonable, discriminatory and unconstitutional, and seriously limits the possibilities that this Party will register as a party by petition.

4. In the State Elections Commission, the Electoral Commissioners represent the interests of the New Progressive Party, the Popular Democratic Party, and the Puerto Rican Independence Party. By virtue of the Electoral Act, these persons are the ones in charge of making electoral decisions.

5. Mr. Juan R. Melecio is the President and administrator of the State Elections Commission. Among other duties, he is responsible for deciding matters on which the Electoral Commissioners cannot agree.

6. The State Elections Commission is the administrative entity which administers the Electoral Act.

7. The Commonwealth of Puerto Rico is an indispensable party to this action insofar as it is the entity in charge of defending the constitutionality of the laws of the Commonwealth of Puerto Rico.

## II. DECLARATORY JUDGMENT

8. It is requested that the Section 3.001 of the Electoral Act be declared unconstitutional insofar as it requires that the petitions for endorsement of the Partido Acción Civil be sworn before a notary-attorney, and Section 3.002 of the Electoral Act insofar as it provides a seven (7) day term to file the petitions for registration after being sworn.

A. Requirement that it be an Attorney who notarizes the oaths of the petitions for registration.

9. Article 3.001, paragraph 3, of the Electoral Act provides as follows:

> "(3) 'Párty by Petition' shall be any group of citizens who, desiring to appear on the electoral ballot of a general election, shall register as a political party, on or before June 1 of the election year, by filing with the Commission sworn petitions to such effect, before notary publics duly admitted to the practice of notary, ***pursuant to the provisions of the Notary Act in effect***, who shall collect from the Electoral Commission a fee of one (10 dollars for each valid, notarized petition signed by a number of electors of no less than five (5) percent of the total votes cast for all candidates for the office of Governor in the preceding general election. A government program or political platform, as well as the names and address of the group of electors that constitute its central directing body, must also be presented." *[Official translation.]*

10. To demand that it be an attorney who notarizes the oaths of the petitions for registration of the Partido Acción Civil is an unreasonable and excessively onerous requirement, totally lacking any justification, which makes it impossible and unnecessarily hinders the right of the candidates of the Partido Acción Civil of access to the electoral ballot. Those unreasonable and onerous conditions also violate the constitutional rights to expression, right to vote, right to association, and to due process of the law, as have been consecrated by the United States Supreme Court in the doctrine of access to ballot.

11. The requirement that it be attorneys who notarize the oaths of the petitions for registration is unreasonable insofar as it subordinates the creation of any party by petition to the legal professional.

12. The requirement that it be attorneys who notarize the oaths of the petitions for registration is unreasonable insofar as it limits the number of endorsements that can be collected daily due to the limited number of all of the attorneys in this jurisdiction.

13. The requirement that it be an attorney who notarizes the petitions for registration is unnecessarily onerous insofar as it is prohibitive for an attorney to leave his/her office – with the cost of opportunity that this implies – to go to the street, house by house, or to public places to gather endorsements.

14. It is extremely onerous for an attorney who notarizes the petition for registration to have to then abandon his/her office and go house to house, to public places to gather the endorsements to prepare four reports. These are: a first report to the State Elections Commission, another quarterly report for the State Elections Commission; enter each endorsement in his/her affidavit log by hand, send the notarial index which must be sent on a monthly basis to the Office of the Inspector of Protocols.

15. It is extremely onerous for any attorney to notarize the petitions for registration insofar as the cost of opportunity is much greater than the dollar which the Act provides be paid to the attorney for each validated endorsement. This is an economically losing proposition

for any attorney and, obviously, decisively dissuades the recruitment of attorneys to swear oaths.

16. It is extremely onerous and unreasonable, and an economic fiasco, for any attorney to have to swear the petitions for registration insofar as between the process of preparing the reports and corroborating the information on the endorsements with the information contained in the voter lists, certainly the attorney loses money.

17. It is onerous for the Partido Acción Civil that it be attorneys who swear the petitions for registration insofar as the Party would first have to campaign to recruit attorneys and then campaign for the citizens to endorse the party. This is clearly unreasonable and onerous.

18. In addition to the foregoing, the requirement that it be attorneys who notarize the oaths in the petitions for endorsement is unconstitutional as it violates equal protection under the laws. The rights to association, to vote, to expression, to asking the government for reparation of grievances, and to being candidates of the group of citizens which constitutes the Partido Acción Civil are being undermined.

19. Article 4.011 of the Electoral Act provides:

**"Officials to swear petitions for primaries.**

Petitions for primaries may be sworn to before the officials authorized by law to take oaths, as well as before any elector authorized by the Commission to perform such duty, at the request of each candidate for primaries.

Persons authorized to take oaths related to petitions for primaries shall be deemed officials

of the Commission for all legal effects, and they shall keep a record of all persons sworn, and the date on which the oath has been taken. This record shall be signed and sent to the Commission at the end of the period for filing petitions for primaries.

When administering the oath, the officials or electors authorized hereby shall sign in the place designated for such purpose in the petition for primaries, and state the serial number in the chronological order that corresponds to the oath being certified in each case. The numbering used by each official shall be of only one series, from number one to that of the last oath administered." *[Official translation.]*

As it reads in the above-cited provisions, the law allows the candidates from the traditional parties to be able to achieve their candidacy to primaries through petitions for registration, whose oath is notarized before electors authorized by the Commission. To distinguish that group of possible candidates (the ones from the traditional parties) from the possible candidates of the Partido Acción Civil is classification by political beliefs. The candidates of the traditional parties have a great advantage over the candidates of the Partido Acción Civil.

20. Classification by political beliefs is a suspect classification which directly affects the fundamental rights to association, to vote, to expression, to asking the government for reparation of grievances. Discrimination by reason of political beliefs is specifically prohibited in Article II, Section 1 of the Constitution of the Commonwealth of Puerto Rico.

21. Since the classification is for political beliefs, it is clearly suspect. Due to the foregoing, and because such classification interferes with the fundamental rights to association, to vote, to expression, to asking the government for reparation of grievances, and to the right to be a candidate, strict scrutiny is applicable.

22. Since strict scrutiny is applicable, the requirement that the oath of the petitions for registration be sworn by an attorney is presumed illegal. The State must show which is the compelling objective pursued with such a requirement, and it must prove that the challenged law is the only way to advance such compelling goal.

23. Definitely there are less onerous ways to advance any objective the State may have in requiring that the oath of the petitions for registration be notarized.

24. The fact that the petitions for candidates to the primaries may be notarized through electors authorized by the Commission to notarize documents proves that the requirement of an attorney to notarize the oaths of the petitions for registration is not indispensable. It is also proven that such requirement is not the only way to advance any objective the State may have.

B. <u>Requirement of filing the petitions for registration seven (7) days after being sworn.</u>

25. It is requested that Section 3.002 of the Electoral Act be declared unconstitutional with respect to the requirement that endorsements be filed with the Commission in the briefest period of seven days after the

endorsement is sworn, otherwise they would be rejected. Article 3.002 of the Electoral Act provides:

> **"Invalid petitions for registration of party**
>
> The Commission will reject every petition for the registration of a political party signed by a person:
>
> 1. Who is not a duly registered elector on the date he signs the petition;
>
> 2. Who during the immediately preceding two- (2) year period has signed a petition to register another party; or
>
> 3. Who has not complied with the formalities established in this subtitle or the regulations adopted hereunder, including the veracity and authenticity of the data stated in the registration petition.
>
> *The registration petitions of a political party must be filed before the Commission no later than seven (7) days after having taken the oath in question.* The Commission, through regulations, shall establish the form and the procedures to be followed for the filing and accepting of said registration petitions." *[Official translation.]*

26. The requirement of having to file the petitions for registration just seven days after having taken the oath is a violation of the rights of the Partido Acción Civil, and of its constituents, of due process of the law in its substantive capacity.

As we mentioned previously, the Partido Acción Civil and the members of the Party are entitled to have access to the electoral ballot, to freedom of expression, to vote, to association, and to asking the government for

reparation of grievances. These rights are fundamental rights.

27. When any regulation which limits the exercise of fundamental rights is questioned, strict scrutiny is applicable. Since strict scrutiny is applicable, it is presumed that the law is unconstitutional and the State must establish the validity of the challenged law. The State must establish that it has a compelling objective which it pursues with the law being challenged and that the challenged law is the only way to achieve 'such compelling objective.

In this case, certainly we do not see what is the compelling objective pursued by the State in requiring that the endorsements, once sworn, be filed with the Commission within the term of scarcely seven (7) days. Definitely, to demand that the endorsements be filed, perfected with their reports, copies, etc., within such a brief term as seven (7) days is not the least onerous way to advance any objective which the State may allege.

1. Seven (7) days is certainly too brief a term. It is necessary that 98,685 endorsements be collected before May 21, 2000.

There are 609 days left between October 1, 1998 and May 31, 2000. It is necessary to collect 98,685 endorsements. If we divide 98,685 endorsements into 609 days, which is the term the Partido Acción Civil has to collect the endorsements, we see that it is necessary that the Party collect 162 endorsements per day. One hundred sixty-two endorsements by seven (7) days equals 1,134 endorsements per week. It definitely takes more than

seven (7) days to prepare the reports, make the copies, perfect 1,134 endorsements with the electoral lists.

It is extremely onerous for the Partido Acción Civil in such a brief time as seven (7) days to file the endorsement once sworn, especially since the Commission has 45 days to reject or accept the endorsements. We do not see any justification whatsoever to the seven (7) day requirement to file the endorsement once sworn.

This is an extremely onerous, unreasonable and unnecessary requirement which must be declared unconstitutional by this Honorable Court.

WHEREFORE, we request of this Honorable Court the following remedies through declaratory judgment:

> (1) That it declare unconstitutional Paragraph 3 of Article 3.001 of the Electoral Act insofar as it requires that it be attorneys admitted to the practice of law in this jurisdiction, pursuant to the provisions of the current notarial act, who notarize the oaths of the petitions for registration;
>
> (2) That it declare unconstitutional Section 3.002 of the Electoral Act insofar as it demands that the petitions for registration of a political party be filed before the Commission not later than seven (7) days after having taken the oath in question;
>
> (3) That it declare that both clauses of both Articles cause irreparable damages to the Partido Acción Civil and that it is imminent that it will continue causing damages if this Honorable Court does not declare them unconstitutional.

(4) That it declare that the constitutional rights of the Partido Acción Civil and of its members be safeguarded likening the registration process as a party by petition to the registration process for primaries as set forth in Article 4.011 of the Electoral Act.

Wherefore, the Partido Acción Civil very respectfully request of this Honorable Court that it issue the following permanent injunction:

## III. PERMANENT INJUNCTION

1. The Partido Acción Civil adopts and alleges everything stated in the declaratory judgment as if it were alleged herein.

2. The Partido Acción Civil files this action requesting declaratory judgment and injunction so that this Honorable Court may declare unconstitutional the clauses of Articles 3.001 and 3.002 which require that it be an attorney who notarizes the oaths of the petitions for registration and that they be filed with the Commission seven (7) days after the oath is notarized, and so as to avoid the application of such statutory provisions because otherwise defendants will continue acting pursuant to the provisions of said Articles of the Electoral Act.

3. Defendants will continue applying the requirements challenged herein throughout the registration process of the Partido Acción Civil, making it impossible for the Party to register as a party by petition. The foregoing constitutes irreparable damages to the Partido Acción Civil, to its members, and to Puerto Rican democracy.

4. Plaintiffs have no other legal remedy. No other action or effort, whether judicial or administrative, may grant adequate, speedy, dynamic and sufficient remedy to protect the fundamental rights of plaintiffs which are being violated with impunity each day.

5. It is evident from the complaint for declaratory judgment and permanent injunction that the Partido Acción Civil is entitled to the remedy requested.

6. It is evident from the complaint for declaratory judgment and permanent injunction that the application of the clauses of Articles 3.001 and 3.002 challenged herein will continue causing serious damages to the Partido Acción Civil.

7. The circumstances alleged hereinabove require immediate judicial action, and should the same continue in effect, the Partido Acción Civil will suffer irreparable damages. The granting of the injunction requested will halt the continuation of the requirement of notarization of the oaths of the endorsements by an attorney, thus allowing the members of the Partido Acción Civil themselves, who are not attorneys, to collect and swear the petitions for registration. Furthermore, the elimination of the requirement of filing at the Commission after seven days of having collected the endorsement will allow for the perfecting of each petition for registration, the drafting of reports, etc., of a larger amount of petitions without their being rejected for having been filed after the seven days.

8. The adjudication of this declaratory judgment declaring unconstitutional the statutory provisions challenged is compelling since with each day that goes by the Party is unable to collect endorsements. To date, in this

initial stage, the Party has more than 20 electors available to collect and swear the petitions for registration.

To date, however, notwithstanding the pleas made in the radio programs in which the Party has participated and in personal solicitations to attorneys, the party only has two attorneys to collect and swear the petitions for registration. These attorneys can only work a few hours on some weekends or holidays due to their prior commitments.

9. Definitely this circumstance, created by the requirement that it be an attorney who notarizes the oaths, causes irreparable harm to the Partido Acción Civil and creates an imminent risk that the Party may not be able to register or that its registration will be so delayed that there would be very little time left to organize an electoral structure, carry out propaganda, etc. Monetary compensation will not provide an adequate remedy to compensate the damage being caused by the challenged statutory provisions.

10. The granting of this injunction is not impeded by any of the circumstances stated in Article 678 of the Code of Civil Procedure, 32 L.P.R.A. 3524, or the applicable case law.

11. This Honorable Court has jurisdiction to grant the remedies requested by virtue of Rule 57 and 59 of Civil Procedure, of the Injunction Act, 32 L.P.R.A. 3521, and of Section 1983 of Title 42 of the United States Code.

WHEREFORE, we respectfully request of this Honorable Court that it Grant this request for permanent injunction and order defendants to:

(1) Cease requiring that the oath of the petitions for registration be notarized before an attorney;

(2) Cease requiring that the petitions for registration be filed with the Commission within seven (7) days after the oath is taken.

(3) Equate the endorsement swearing and endorsement filing processes with the process required for filing candidacies for primaries, as provided in Article 4.011 of the Electoral Act;

(4) Any other remedy which is deemed suitable to protect the constitutional rights of the Partido Acción Civil and of the People of Puerto Rico to freedom of association, freedom of speech, to vote, to ask the Government for reparation of grievances, and to the right to be candidates.

RESPECTFULLY SUBMITTED, in San Juan, Puerto Rico, on October 6, 1998.

(Signed)
NELSON ROSARIO-RODRIGUEZ
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**Certification**

**I, Olga M. Alicea, an English-Spanish interpreter and translator certified to that effect by the Administrative Office of the U.S. Courts, do hereby certify that I have personally translated the foregoing document from Spanish to English and that the translation is true and accurate to the best of my knowledge and abilities.**

**/s/ Olga M. Alicea**
**Olga M. Alicea, USCCI**